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15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
16 IN AND FOR THE COUNTY OF YAVAPAI

17 STATE OF ARIZONA,

18 Plaintiff,

19 vs.

20 STEVEN CARROLL DEMOCKER,

21 Defendant.

) No. P1300CR20081339

) Div. 6

) **REPLY IN SUPPORT OF**
) **MOTION TO PRECLUDE THE**
) **STATE'S COMPUTER**
) **FORENSIC EXPERTS AND**
) **REPORTS**

22 **MOTION**

23 The State acknowledges that DPS did not begin to immediately examine the
24 computer forensic evidence in this case, that its examinations are not yet complete, with
25 ten weeks to trial, and that it has not disclosed the EnCase case files that the defense has
26 requested. The State does not address that its failures have virtually guaranteed that Mr.
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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 MAR 10 PM 4:04

JEANNE TICKS, CLERK

BY: S. FIELDS

1 DeMocker's confrontation right to independently review the State's examination of
2 evidence will be violated if this evidence is permitted to be introduced at trial. The
3 Court should preclude the State from offering its computer forensic experts and reports.
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5 The undisputed facts are that the State has had CDs, DVDs, flash drives, and
6 hard drives since they were seized from Mr. DeMocker and Ms. Kennedy's residences
7 in July 2008. The State disclosed that the DPS Computer Forensic Lab did not begin
8 examining these items until November 2008, over four months after they were
9 originally seized. James Knapp's computer was seized in January 2009 and DPS did
10 not begin examination of this computer until ten months later, in October 2009. The
11 State has no estimate as to when its examinations will be complete. The State does not
12 dispute, because it cannot, that its delay in examining these items and in completing its
13 review has prevents Mr. DeMocker and his defense from being able to review and
14 analyze the State's evidence and reports. Nor does it address the ongoing violation of
15 Mr. DeMocker's confrontation right if this evidence is introduced at trial.
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18 The State has still not disclosed the EnCase case file. The defense has now
19 provided information from the EnCase Software manual which directly references the
20 existence of the case file and its critical importance to forensic examination. The
21 State's argument that Sgt. Arthur's failure to understand this somehow does not call into
22 question the State's forensic examinations is both troubling and inexplicable. Either
23 Sgt. Arthur is not familiar with basic terms of the software he is using to forensically
24 examine these items or he provided false information. In either case, the EnCase case
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1 file has still not been disclosed. Thus, the defense is still unable to examine even the
2 partial State forensic reports.

3 The State was put on notice by the Court during the May 12, 2009 hearing that
4 its disclosure deadline was June 22 and that this deadline could be extended for good
5 cause, but that the State had an obligation to investigate its case. Waiting over four
6 months to examine multiple hard drives and over eleven months to examine James
7 Knapp's hard drive does not comport with these obligations, nor does refusing to
8 provide EnCase case files to the defense.
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11 Rule 15.7 accords the Court broad discretion in imposing a sanction. Although
12 the State acknowledges that it has violated the disclosure rules and does not dispute that
13 Mr. DeMocker's Constitutional confrontation right will be violated by introduction of
14 this evidence, it offers no alternative sanction to preclusion. The alternatives offered in
15 Rule 15.7 include precluding or limiting the calling of a witness, use of evidence or
16 argument; dismissing a case; granting a continuance or declaring a mistrial; holding
17 counsel in contempt; imposing costs; or other appropriate sanctions. Given the
18 importance of this evidence and the State's lack of diligence in examining the evidence,
19 completing the examination, providing the disclosure to the defense, responding to the
20 request for EnCase case files and accurately testifying about the status of the State's
21 disclosure, this evidence should be excluded. An elevated level of due process applies
22 both to the guilt and penalty phases of this case. *Beck v. Alabama*, 447 U.S. 625, 638
23 (1980).
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2 **CONCLUSION**

3 Defendant Steven DeMocker, by and through counsel, hereby requests that this
4 Court prohibit the State from offering testimony from any of the State's computer
5 forensic experts and of the results of any computer forensic examinations.
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7 DATED this 10th day of March, 2010.

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9 By: 

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20 **ORIGINAL** of the foregoing hand delivered for
21 filing this 10th day of March, 2010, with:

22 Jeanne Hicks
23 Clerk of the Court
24 Yavapai County Superior Court
25 120 S. Cortez
26 Prescott, AZ 86303

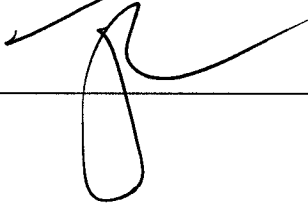
27 **COPIES** of the foregoing hand delivered this
28 this 10th day of March, 2010, to:

The Hon. Thomas B. Lindberg
Judge of the Superior Court
Division Six

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